(C.A. 5), certiorari denied, 393 U.S. 925; *Edwards* v. *United States*, 375 F. 2d 862, 865 (C.A. 9). The court correctly instructed the jury (Tr. Nov. 17, 1969, p. 17) that the matter misrepresented is material if it could have influenced the Internal Revenue Service in auditing a tax return, and that any item in a tax return which would substantially affect the tax due would be material.

4. Petitioner makes two other contentions, each of which was properly rejected by the court of appeals (Pet. App. 41). Testimony of insurance company officials proved that five checks were issued to petitioner on account of settlement of claims of four of petitioner's clients who were deceased at the time of trial (Tr. Dec. 9, 11, 1969, pp. 2-148). The amount of the settlement checks which petitioner issued to his clients for their share of these settlements was allowed to petitioner as a reduction of income, and all unidentified checks issued by petitioner were also allowed in reduction of income (R. 117-143). Although advances made

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1960 and 1961 (Tr. Dec. 15, 1969, p. 53-54), and the government's summary of the evidence showed understatements of income for 1960 and 1961, respectively, of $12,958.95 and $13,740 (R. 129, 143). The district court, in ruling on petitioner's motion to suppress use of his records, reviewed the testimony of a government witness to the effect that "the civil audit terminated on July 8, 1963, when it was referred to the Intelligence Division for consideration of possible criminal violations of the Internal Revenue Code; * * *" (R. 90). This was not a finding by the court that the Internal Revenue Service had made a no-deficiency determination, and the initial examining revenue agent, who referred the case to the Intelligence Division on July 8, 1963, testified that he did so because he found what appeared to be "a gross understatement of income." The civil settlement is postponed in such cases. (Tr. Dec. 12, 1969, pp. 21, 73.)

by petitioner to clients in years before 1960 were not allowed in reduction of income received during 1960 or 1961, this was correct in view of his use of a cash basis in reporting his income. (Tr. Dec. 12, 1969, p. 12.)

Petitioner complains (Pet. 11-12) that certain of his office file jackets were not admitted into evidence. He had told the initial examining agent, however, that these files were no longer available to substantiate income and expenses (Tr. Dec. 12, 1969, pp. 48-49), and the district court properly ruled that no adequate foundation had been established by petitioner (who did not testify) to make such files admissible as to the truth of the notations on the file jackets (Tr. Dec. 23 and 26, 1969, pp. 60-64).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

SCOTT P. CRAMPTON,
Assistant Attorney General.

JOHN P. BURKE,
JOSEPH H. REITER,
Attorneys.

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